# *EEOC v. Dimare Ruskin, Inc.*

United States District Court for the Middle District of Florida, Fort Myers Division

February 15, 2012, Decided; February 15, 2012, Filed

Case No. 2:11-cv-158-FtM-99SPC

**Reporter**
2012 U.S. Dist. LEXIS 24951 *

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, -vs- DIMARE RUSKIN, INC., Defendant.

**Prior History:** *EEOC v. Dimare Ruskin, Inc., 2012 U.S. Dist. LEXIS 24952 (M.D. Fla., Feb. 15, 2012)*

**Counsel:** **[*1]** For Equal Employment Opportunity Commission, Plaintiff: Kaleb M. Kasperson, LEAD ATTORNEY, Equal Employment Opportunity Commission, Miami, FL; Kimberly A. McCoy-Cruz, Muslima Lewis, LEAD ATTORNEYS, US Equal Employment Opportunity Commission, Miami, FL.

For Catalina Ramirez, Francisco Chavez, Lucia Reyes, Intervenor Plaintiffs: Kathryn Sydny Piscitelli, Peter Frederick Helwig, LEAD ATTORNEYS, Harris & Helwig, PA, Lakeland, FL.

For DiMare Ruskin, Inc., Defendant: David J. Stefany, LEAD ATTORNEY, Shaina Thorpe, Allen, Norton & Blue, PA, Tampa, FL.

**Judges:** SHERI POLSTER CHAPPELL, UNITED STATES MAGISTRATE JUDGE.

**Opinion by:** SHERI POLSTER CHAPPELL

## Opinion

**ORDER**

This matter comes before the Court on Plaintiff's Motion for Protective Order (Doc. #38), filed on December 23, 2011. Defendant filed its Response in Opposition to Plaintiff's Motion for Protective Order (Doc. #45) on January 20, 2012. Plaintiff filed a Reply to DiMare's Response in Opposition to EEOC's Motion for a Protective Order (Doc. #49) on February 2, 2012. This Motion is thus ripe for review.

**BACKGROUND**

Catalina Ramirez and Lucia Reyes ("Plaintiff-Intervenors") filed charges of discrimination with the EEOC in April 2009. The Plaintiff-Intervenors allege that **[*2]** they were subjected to sexual harassment and retaliation while working at DiMare Ruskin, Inc. ("DiMare" or "Defendant"). After investigation of the Plaintiff-Intervenors allegations and the EEOC's issuance of its cause determinations, conciliation of their claims failed in January 2011. On March 22, 2011, the EEOC filed this action against DiMare under Title VII of the Civil Rights Act of 1964, as amended, *42 U.S.C. § 2000e et seq.* ("Title VII"), and Title I of the Civil Rights Act of 1991, *42 U.S.C. § 1981a*. The Commission filed this action in the public interest and on behalf of the Plaintiff-Intervenors and a class of similarly-situated female employees who were subjected to a sexually hostile work environment and, in some cases, retaliation, while working at Defendant's Immokalee facility during the 2008-2009 tomato seasons (collectively, the "Claimants"). See Doc. #1.

On August 5, 2011, Defendant, DiMare Ruskin, served its First Request for Production of Documents on Plaintiff, Equal Employment Opportunity Commission ("EEOC"). On September 7, 2011, the EEOC served its Responses together with the EEOC's privilege log. Defendants asserted that Document Requests ***Nos.*** 1, 3, 5, 8, 10, **[*3]** 11, 12, and 13, request information about the Claimants that would include information relating to the Claimant's immigration status. Therefore, the Plaintiff withheld privileged or otherwise objectionable documents as expressly identified in its privilege log, but did produce approximately 1800 pages of documents. These Requests read as follows:

Request 1: The complete investigative file(s) prepared and retained with regard to the charge of discrimination filed by Catalina Ramirez (f/k/a Catalina Jaimes) against DiMare Ruskin, specifically EEOC Charge ***Number*** 511-2009-01853.

Request 3: The complete investigative file(s) prepared

and retained with regard to the charge of discrimination filed by Lucia Reyes against DiMare Ruskin, specifically EEOC Charge ***Number*** 511-2009-01808.

Request 8: Any and all documents that reference, relate to, or otherwise reveal communications between the Equal Employment Opportunity Commission and any supporter, employee, representative, member or affiliate of the Coalition of Immokalee Workers regarding allegations of sexual harassment or regarding the asserted claims of Catalina Ramirez, Lucia Reyes, Francisco Javier Chavez, Gladis Galvez, a/k/a Blanca Rueda, **[*4]** or any other person employed by DiMare Ruskin.

Request 10: Any and all documents Plaintiff has submitted to or received from Catalina Ramirez (f/k/a Catalina Jaimes), her agents or representatives, regarding her employment at DiMare Immokalee or other employment in the United States.

Request 11: Any and all documents Plaintiff has submitted to or received from Lucia Reyes, her agents or representatives, regarding her employment at DiMare Immokalee or other employment in the United States.

Request 12: Any and all documents Plaintiff has submitted to or received from Gladis Galvez, a/k/a Blanca Rueda, her agents or representatives, regarding her employment at DiMare Immokalee or other employment in the United States.

Request 13: Any and all documents Plaintiff has submitted to or received from Francisco Javier Chavez, his agents or representatives, regarding his employment at DiMare Immokalee or other employment in the United States.

Additionally, on or about November 28, 2011, Defendant issued a third-party subpoena duces tecum on the Coalition of Immokalee Workers ("CIW") and its attorneys. The demands relevant to the instant Motion included that the CIW produce documents reflecting any **[*5]** and all conversations between any individual employed by or otherwise under the control of the Coalition of Immokalee Workers and the EEOC regarding Plaintiff-Intervenors and several other named individuals. The subpoena also demanded any and all documents maintained by the CIW which contain the names of Plaintiff-Intervenors or other named individuals. Specifically, subpoena items (a) and (c) read:

> (a) Documents reflecting any and all communications between any individual employed by or otherwise under the control of The Coalition of Immokalee Workers, Inc. ("CIW") and the Equal Employment Opportunity Commission ("EEOC"), including any individual working on behalf of the EEOC, regarding:
>
> a. Catalina Ramirez (f/k/a Catalina Jaimes);
> b. Lucia Reyes;
> c. Gladis Galvez (a/k/a Blanca Rueda);
> d. Francisco Javier Chavez;
> e. Ricardo Campbell;
> f. Richard Lee Campbell; and/or
> g. DiMare Ruskin, Inc. or any other person employed by DiMare Ruskin, Inc.
>
> and
>
> (c) Any and all documents, not otherwise provided in response to items (a) or (b), maintained by the CIW that either contain the name(s) of any or all of the following individuals or otherwise relate to any or all of the following individuals:
>
> a. Catalina **[*6]** Ramirez (f/k/a Catalina Jaimes);
> b. Lucia Reyes;
> c. Gladis Galvez (a/k/a Blanca Rueda);
> d. Francisco Javier Chavez;
> e. Ricardo Campbell;
> f. Richard Lee Campbell; and/or
> g. DiMare Ruskin, Inc. or any other person employed by DiMare Ruskin, Inc.

Plaintiff EEOC has moved for an order to protect the documents sought by the discovery requests and by the subpoena from discovery. It objects to the subpoena on the grounds that it seeks to discover documents protected by the attorney-client privilege, attorney work-product doctrine, and the common interest doctrine. Additionally, the Plaintiff objects to Defendant's document requests and subpoena on the grounds that they request documents which relate to the Plaintiff-Intervenors' immigration or citizenship status. Plaintiff argues that such information is not relevant to the claims or defenses raised in this lawsuit and that any probative value such information may have is substantially outweighed by its prejudicial effect on the Plaintiff-Intervenors, the public interest, and the EEOC.

## PROTECTIVE ORDER STANDARD

A person from whom discovery is sought may move under *Fed. R. Civ. P. 26(c)* for a protective order limiting disclosure or for providing confidentiality. **[*7]** *Rule 26(c)* allows the Court to issue a protective order to limit

discovery and make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. *Moore v. Potter, 141 Fed. Appx. 803 (11th Cir. 2005)* (citing *Fed. R. Civ. P. 26(c)*). A protective order should be entered only when the movant makes a particularized showing of "good cause" and specific demonstration of fact by affidavit or testimony of a witness with personal knowledge, of the specific harm that would result from disclosure or loss of confidentiality; generalities, conclusory statements and unsupported contentions do not suffice. *Gulf Oil Company v. Bernard, 452 U.S. 89, 102 n. 16, 101 S. Ct. 2193, 68 L. Ed. 2d 693 (1981)*; *Grams v American Medical Instruments Holdings Long Term Disabilty Plan, 2009 U.S. Dist. LEXIS 89455, 2009 WL 2926844 *5 (M.D. Fla. Sept. 14, 2009)* (holding this burden contemplates a particular and specific demonstration of facts as distinguished from stereotyped and conclusory statements). Courts have broad discretion at the discovery stage to determine whether or not a protective order is appropriate and what degree of protection is required. *Seattle Times v. Rhinehart, 467 U.S. 20, 36-37, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)*.

Whether **[*8]** good cause exists for a protective order is a factual matter to be decided by the nature and character of the information in question. *Chicago Tribune Co. V. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1315 (11th Cir. 2001)*. When issuing a protective order the Court must articulate its reasons for granting the protective order sufficient to allow for appellate review. Additionally, the Court must evaluate and balance the interests of the parties and the non-parties concerning dissemination of discovery material. *In Re Alexander Grant & Co. Litigation, 820 F.2d 352, 355, 357 (11th Cir. 1987)*.

**DISCUSSION**

Plaintiff relies on the Privilege Log produced by Plaintiff-Intervenors in a nearly identical Motion. (Doc. #37). Plaintiff-Intervenors allege in their Privilege Log (Doc. #37-4) that the communications between counsel and the CIW are protected by Attorney-Client Privilege and by the Work-Product Doctrine. Plaintiff contends that communications involving representatives of the EEOC are similarly protected by those doctrines because the Plaintiff-Intervenors and the EEOC share a common interest. Additionally, Plaintiff seeks a blanket protective order regarding documents relating to the **[*9]** immigration status of all Claimants involved in this lawsuit.

*1. Whether a Protective Order Barring Discovery of Claimants' Immigration Status and/or Citizenship is Necessary*

Plaintiff requests that this Court enter a blanket order of protection prohibiting requests for discovery, via written requests, depositions, third party subpoenas or otherwise, concerning the immigration status of Plaintiff-Intervenors, Claimants, and potential class members in this case. Plaintiff argues that a protective order barring discovery of the Claimants' (here, Plaintiff-Intervenors and other named individuals), immigration status and/or citizenship is necessary to protect them from annoyance, embarrassment, oppression, and undue burden. *Fed. R. Civ. P. 26* states in pertinent part:

> A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken . . . . The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the **[*10]** following:
>
> (A) forbidding the disclosure or discovery;
>
> . . . .
>
> (C) prescribing a discovery method other than the one selected by the party seeking discovery . . . .

*Fed. R. Civ. P. 26(c)(1)*. "'If a court finds particularized harm will result from disclosure of information to the public, then it balances the public and private interests to decide whether a protective order is necessary.'" *Rivera v. NIBCO, 364 F.3d 1057, 1063 (9th Cir. 2003)* (quoting *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1211 (9th Cir. 2002))*. Where the immigration status of the charging parties is not relevant to claims or defenses in a case, good cause may exist to enter a protective order. *E.E.O.C. v. Bice of Chicago, 229 F.R.D. 581, 582-83 (N.D. Ill. 2005)*. Granting employers the right to inquire into workers' immigration status in Title VII cases would

> allow them to raise implicitly the threat of deportation and criminal prosecution every time a worker, documented or undocumented, reports illegal practices or files a Title VII action. Indeed,

> were we to direct district courts to grant discovery requests for information related to immigration status in every case involving national origin **[*11]** discrimination under Title VII, countless acts of illegal and reprehensible conduct would go unreported.

*Rivera, 364 F.3d at 1065*. Thus, such discovery would have a chilling effect on the bringing of civil rights actions.

Where parties do not seek front pay, back pay, lost wages, or benefits, immigration status of the charging parties is not relevant to the Title VII claims. *Bice of Chicago, 229 F.R.D. 581, 583*. Although immigration status may be relevant to the charging parties' credibility, this issue of a party's credibility "does not by itself warrant unlimited inquiry into the subject of immigration status when such examination would impose an undue burden on private enforcement of employment discrimination laws." *Avila-Blum v. Casa de Cambio Delgado, Inc., 236 F.R.D. 190, 192 (S.D.N.Y. 2006)*.

Plaintiff contends that good cause exists for the entry of a protective order forbidding Defendant's inquiry into Claimants' immigration status because the *in terrorem* effect upon Claimants outweighs Defendant's interest in obtaining that information for the purposes of assessing the Claimants' credibility. Defendant contends that preventing the disclosure of the immigration and citizenship **[*12]** documents of the Claimants' in this case does not protect the Plaintiff-Intervenors from potential arrest or deportation, because the federal government already knows whether the Plaintiff-Intervenors are here illegally. Thus, the Defendant argues, no new threat arises from Plaintiff's disclosure of these documents to DiMare.

This case deals with sexual harassment and unlawful termination for refusing to comply with a supervisor's sexual advances. All individuals, both citizens and immigrants, are protected from unlawful employment discrimination under Title VII. See *Espinoza v. Farah Mfg. Co., Inc., 414 U.S. 86, 95, 94 S. Ct. 334, 38 L. Ed. 2d 287 (1973)*. Therefore, Claimants' immigration status has no bearing on the issue of Defendant's liability. Additionally, since Claimants are not seeking back pay, front pay, or reinstatement, the Claimants' immigration status is irrelevant as to damages calculations. Thus, the limited probative value that Claimants' immigration status has on this case lies only with the issue of Claimants' credibility, which is far outweighed by other competing concerns. There are other ways that Defendant may attack Claimants' credibility without delving into **[*13]** their immigration status.

Good cause exists to issue the protective order over the revelation of Claimants' immigration status. The EEOC's mission of protecting victims of employment discrimination would be hampered if potential victims are unwilling to come forward and cooperate because of fear of removal or other immigration consequences. Most importantly, discovery of the Claimants' immigration status would cause them embarrassment and, if their status is found to be illegal, could subject them to criminal charges and, possibly, deportation. Therefore, if this Court does not suppress discovery into the Claimants' immigration status, it would discourage employees from bringing actions against their employers who engage in discriminatory employment practices.

Accordingly, a blanket protective order barring discovery by Defendant DiMare Ruskin, Inc. of information relating to the immigration or citizenship status of the Plaintiff-Intervenors or any class member or protective class member in this case will be issued by the Court.

*2. Whether Privilege is Properly Asserted on the Grounds of Common Interest*

Defendant seeks documents pertaining to communications between Plaintiff-Intervenors, **[*14]** their attorney and his agents, and the EEOC. Plaintiff argues that such documents are protected by the attorney-client privilege and the common interest doctrine. The common interest doctrine is "an extension of the attorney client privilege." *Waller v. Financial Corp. of Am., 828 F.2d 579, 583 n.7 (9th Cir. 1987)*. It protects communications between an individual, or the individual's attorney, and an attorney representing a person or entity that shares a common interest with the individual regarding a legal matter of common interest. See *United States v. Schwimmer, 892 F.2d 237, 243-44 (2d Cir. 1989)*, cert. denied, *502 U.S. 810, 112 S. Ct. 55, 116 L. Ed. 2d 31 (1991)*; see also *United States v. Gumbaytay, 276 F.R.D. 671, 2011 WL 5248358 (M.D. Ala. 2011)* (court held that the common interest rule protects confidential communications between the United States Department of Housing and Urban Development ("HUD") and HUD complainants in a Fair Housing Act sexual harassment case, since the parties had undertaken a joint effort with respect to a common legal interest). The common interest doctrine protects

only communications made in the course of an ongoing common enterprise and intended to further the enterprise. **[*15]** *Eisenberg v. Gagnon, 766 F.2d 770, 787 (3d Cir. 1985)*, cert. denied, *474 U.S. 946, 106 S.Ct. 342, 106 S. Ct. 343, 88 L.Ed.2d 290 (1985)*; *Matter of Bevill, Bresler & Schulman Asset Management Corp., 805 F.2d 120 (3d Cir.1986)*. As with all other privilege claims arising out of the attorney-client relationship, a claim resting on the common interest rule requires a showing that the communication in question was given in confidence and that the client reasonably understood it to be so given. *Schwimmer, 892 F.2d at 244*. See *United States v. Keplinger, 776 F.2d 678, 701 (7th Cir.1985)*, cert. denied, *476 U.S. 1183, 106 S.Ct. 2919, 91 L.Ed.2d 548 (1986)*; *Kevlik v. Goldstein, 724 F.2d 844, 849 (1st Cir.1984)*.

After the EEOC undertakes to file suit seeking relief for individual victims of discrimination, it stands in a unique position. The Supreme Court has stated that "the EEOC is not merely a proxy for the victims of discrimination." *Gen. Tel. Co. of the NW, Inc. v. EEOC, 446 U.S. 318, 326, 100 S. Ct. 1698, 64 L. Ed. 2d 319 (1980)*. Indeed, the EEOC stands in the role of attorney for those individuals. See *EEOC v. Internat'l Profit Assoc., 206 F.R.D. 215, 219 (N.D. Ill. 2002)*. "The EEOC's ability to maintain suit 'in its own name' has no meaning **[*16]** apart from whatever relief the Commission obtains for employees who have been treated as less than equal." *Harris v. Amoco Prod. Co., 768 F.2d 669, 682 (5th Cir. 1985)*. These victims of discrimination should not be denied the ability to engage in confidential communications with the attorney seeking relief on their behalf simply because the suit was filed by the government, as authorized by statute, rather than by the individuals themselves. *Upjohn, 449 U.S. at 389*.

In this case, after investigation of the Charging Parties' allegations against Defendant and the EEOC's issuance of its cause determinations, conciliation of the Charging Parties' claims failed on January 18, 2011. The EEOC filed this action against Defendant under Title VII of the Civil Rights Act of 1964 on March 22, 2011. The EEOC's meetings with the Plaintiff-Intervenors were facilitated by representatives of the CIW. No one attended the EEOC meetings with Plaintiff-Intervenors other than the EEOC attorneys, the Plaintiff-Intervenors, CIW representatives, and Plaintiff-Intervenors' attorney. All communications made after the failed conciliation were made in the context of an attorney-client relationship and are thus **[*17]** privileged. Importantly, the EEOC states in its Reply Brief (Doc. #49) that it is only asserting attorney-client and/or common interest privileges with respect to communications occurring after conciliation of the subject charges failed on January 18, 2011.

Additionally, the EEOC and Plaintiff-Intervenors, by nature of the Title VII action, share a common interest in the litigation. Thus, the presence of EEOC attorneys and employees or agents does not destroy the confidential nature of any communications made between Plaintiff-Intervenors and counsel. Effective representation in the current suit requires full disclosure of information among parties with similar interests. Consequently, under the grounds of common interest, if the documents involving communications between Plaintiff-Intervenors, their counsel, and the CIW are protected, the presence of EEOC representatives does not destroy that privilege.

*3. Whether Privilege is Properly Asserted on the Grounds of Attorney-Client Privilege*

Plaintiff contends that the documents sought by Defendant in the discovery requests and in the third-party subpoena are protected by the attorney-client privilege. The elements of the attorney-client **[*18]** privilege are: (1) Where legal service advice of any kind is sought, (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence, (5) by the client, (6) are at his instance permanently protected, (7) from disclosure by himself or by the legal advisor, (8) except the protection may be waived. *Universal City Development Partners, Ltd. v. Ride & Show Engineering, Inc., 230 F.R.D. 688, 690 (M.D. Fla.2005)* (quoting *International Telephone and Telegraph Corp. v. United Telephone Co., 60 F.R.D. 177, 184-85 (M.D. Fla.1973))*. The attorney-client privilege is only available when all the elements are present. *Universal City Development Partners, Ltd., 230 F.R.D. at 690* (citing *Provenzano v. Singletary, 3 F. Supp. 2d 1353, 1366 (M.D. Fla.1999)* aff'd, *148 F.3d 1327 (11th Cir.1998))*. The party asserting the privilege has the burden of proving the existence of the privilege. *United States v. Schaltenbrand, 930 F.2d 1554, 1562 (11th Cir.1991)*. The privilege extends to communications from an attorney to his client, as well as the reverse. *Knights Armament Co. v. Optical Systems Technology, Inc., 2009 U.S. Dist. LEXIS 14271, 2009 WL 331608 *2 (M.D. Fla. Feb.10, 2009)* **[*19]** (citing *U.S. v. Pepper's Steel & Alloys, Inc., 1991 U.S. Dist. LEXIS 21563, 1991 WL 1302864 * 3 (S.D. Fla. Mar. 19, 1991))*.

The protection of the privilege extends only to communications and not to facts. "The client cannot be compelled to answer the question, 'What did you say or write to the attorney?' but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication with his attorney." *Philadelphia v. Westinghouse Elec. Corp., 205 F.Supp. 830, 831 (1962)*. Similarly, all communications between an attorney and a client are not privileged. *Knights Armament Co., 2009 U.S. Dist. LEXIS 14271, 2009 WL 331608 at *2* (citing *In re Grand Jury Matter **No.** 91-01386, 969 F.2d 995, 997 (11th Cir.1992)*). For example, when information is communicated to a lawyer with the intent that the information be publicly disclosed, courts have found that the communications are not intended to be confidential. *Knights Armament Co., 2009 U.S. Dist. LEXIS 14271, 2009 WL 331608 at *2* (citing *In re Hillsborough Holdings Corp., 118 B.R. 866, 869-70 (M.D. Fla.1990)*).

The purpose of the attorney-client privilege is "to encourage full and frank communication between lawyers and their clients and thereby promote broader public **[*20]** interests in the observance of law and the administration of justice." *Upjohn Co. v. United States, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L. Ed. 2d 584 (1981)*. Thus, in order to promote complete exchanges of information and advice between attorney and client, the privilege has been extended to include those persons who act as the attorney's agents, including "secretaries, file clerks, telephone operators, messengers, clerks not yet admitted to the bar, and aides of other sorts." *United States v. Kovel, 296 F.2d 918, 921 (2d Cir. 1961)*. "'The assistance of these agents being indispensible to his work and the communications of the client often necessarily committed to them by the attorney or by the client himself, the privilege must include all the persons who act as the attorney's agents.'" Id. (citing 8 Wigmore, Evidence, § 2301). See also *Louisiana Mun. Police Employees Retirement System v. Sealed Air. Corp., 253 F.R.D. 300, 311 (D. N.J. 2008)* (summarizing the evolution of the extension of attorney-client privilege). Thus, the presence of a third party does not waive attorney-client privilege "when the third party is present to assist the attorney in rendering legal services." *Jenkins v. Bartlett, 487 F.3d 482, 490-91 (7th Cir. 2007)*. **[*21]** Included among the ranks of privileged agents are foreign language translators. See *Kovel, 296 F.2d at 921* (analogizing the use of foreign-language interpreters in recognizing a privilege for an accountant-assistant).

Defendant seeks to obtain from the Coalition of Immokalee Workers ("CIW") all of its communications with Plaintiff and Plaintiff-Intervenors. Plaintiff objects to this discovery request on the grounds that the information and documents sought are protected by attorney-client privilege. Plaintiff relies on Plaintiff-Intervenors' Motion, which alleges that the CIW has served as a foreign language translator for, and thus an agent of, Plaintiff-Intervenors' attorney ("Attorney Helwig"). Defendant disagrees with this characterization of the relationship between the CIW and Attorney Helwig. As a primary matter, the Defendant asserts that many of the communications which the subpoena seeks are not the type that are protected by the attorney-client privilege (i.e., documents pertaining to the attorney-client fee agreement). Additionally, Defendant argues that the relationship between the CIW and Attorney Helwig does not bear the indicia of an agency relationship. Instead, the **[*22]** Defendant argues, the evidence suggests that the CIW voluntarily enmeshed itself in the affairs of the Plaintiff-Intervenors to advance the CIW's agenda.

As the Court explains in its Order issued in response to Plaintiff-Intervenors' Motion for Protective Order, since Attorney Helwig does not speak Spanish, "virtually all of their communications with counsel have been through CIW staff members . . . who translated, explained, and participated with them in meetings and interviews." Pl.-Inter. Mot (Doc. #37) at 2. CIW staff have arranged meetings and telephone interviews, relayed confidential information and advice, conducted interviews, and provided translation services on behalf of Plaintiff-Intervenors' counsel. Plaintiff-Intervenors' counsel certifies that the relevant CIW staff members, Laura Germino and Julia Perkins, who are not themselves attorneys, were working under his supervision. In the course of their involvement, Ms. Germino and Ms. Perkins engaged in protected, confidential communications with the attorney's clients.

The documents requested by the Defendant consist of communications made back and forth between counsel and Plaintiff-Intervenors through the CIW, requesting **[*23]** and giving information, obtaining documents, giving legal advice and analysis, arranging interviews, asking and answering questions, preparing and editing legal documents, and computing damages, and exchanges made in preparation for events such as the E.E.O.C. Conciliation Conference. These communications made solely between Plaintiff-Intervenors' and their counsel are privileged. *Jenkins, 487 F.3d at 490-91*. The presence of the CIW as an

agent of counsel for the purpose of communicating with his clients does not destroy that privilege.

Accordingly, it is now

**ORDERED:**

(1) Plaintiff's Motions for Protective Order (Doc. #38) is **GRANTED.**
(2) A protective order prohibiting requests for discovery, via written requests, depositions, third party subpoenas or otherwise, concerning the immigration status of the Plaintiff-Intervenors, Claimants, and potential class members is entered.
(3) A protective order is also entered protecting subpoena items (a) and (c) with respect to communications privileged and/or protected by the attorney-client privilege and the common interest doctrine in the possession of third party Coalition of Immokalee Workers.

**DONE AND ORDERED** at Fort Myers, Florida, this 15th **[*24]** day of February, 2012.

/s/ Sheri Polster Chappell

**SHERI POLSTER CHAPPELL**

**UNITED STATES MAGISTRATE JUDGE**

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